

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

Case No.: 0061011722

KIM STEARNS,

Charging Party,

-v-

POLAR ELECTRIC INC.,

Respondent.

ORDER

Kim Stearns (Stearns) filed a complaint of discrimination against Polar Electric with the Department of Labor and Industry. The Human Rights Bureau considered Stearns' complaint timely filed and conducted an informal investigation. The Human Rights Bureau determined there was reasonable cause to believe discrimination occurred. Subsequently, the case moved on to the Hearings Bureau which held a contested case hearing pursuant to § 49-2-505, MCA. Following the hearing, the Hearings Bureau issued a decision that determined although Stearns was subjected to a sexually hostile work environment, Stearns' discrimination claim was barred by the statute of limitations. The Hearings Bureau found that the last acts Stearns alleged, a separation from working with a male coworker and her termination from employment, did not contribute to the sexually hostile work environment.

Stearns filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on May 15, 2007. Peter Michael

Meloy and Robin Meguire appeared on behalf of Stearns. Peter Michael Meloy argued on Stearns' behalf. Joe Seifert appeared and argued on behalf of Polar Electric.

In her appeal, Stearns asserted the hearing officer erred in concluding that Stearns' complaint was barred by the statute of limitations. Stearns argued that the hearing officer should have concluded that for statute of limitations purposes, Stearns' allegations that she was improperly separated from working with a male coworker and then improperly terminated due to the sexually hostile work environment were sufficient. Stearns asserted the hearing officer erred in applying the *McDonnell Douglas* shifting burden analysis to the last acts of separation and termination.

Stearns also asserted that the hearing officer erred in failing to apply a modified doctrine of equitable tolling to conclude Stearns' claim was not time barred because she relied on the Human Rights Bureau in calculating the deadline by which her complaint must be filed. Finally, Stearns asserted the hearing officer should have concluded her complaint was constructively filed on the day the Human Rights Bureau initially drafted her complaint. Stearns argued that because the hearing officer concluded Stearns was subjected to a sexually hostile work environment during earlier time periods, the Commission should reverse the hearing officer's determination on the statute of limitations and remand for further proceedings.

Polar Electric argued the hearing officer's determination that Stearns' separation and termination were not contributing parts of the sexually hostile work environment was not clearly erroneous as it based on substantial evidence and was correct as a matter of law. Polar Electric further argued the hearing officer correctly determined to not apply the doctrine of equitable tolling asserted by Stearns and correctly determined Stearns' complaint was not constructively filed when the Human Rights Bureau assisted her in drafting the complaint.

After careful and due consideration, the Commission concludes the Hearings Bureau decision in this matter is supported by competent substantial evidence and the conclusions of law are correct. The Commission affirms the Hearings Bureau decision and hereby adopts and incorporates the decision in its entirety.

A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final agency decision in a contested case is entitled to file a petition for judicial review within 30 days after service of the final agency decision. Mont. Code Ann. § 2-4-702. The petition must be filed in the district where the petitioner resides or has the petitioner's principal place of business, or where the agency maintains its principal office.

DATED this ____ day of May, 2007.

Chair Ryan C. Rusche
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the forgoing Human Rights Commission ORDER was served on the following persons by U.S. mail, postage prepaid, on May ____, 2007.

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